

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Aracelis Ortiz, Executrix of the
Estate of Carlos Ortiz
P.O. Box 530391
Harlingen, TX 78553

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File No. EB-02-SD-144
NAL/Acct. No. 200232940008
FRN: 0003-7552-87

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

By the Enforcement Bureau: San Diego Office

Released: September 30, 2002

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Aracelis Ortiz, Executrix of the Estate of Carlos Ortiz (“Aracelis Ortiz”), the licensee of Class A Television Broadcast (“Class A”) station KCOS-LP in Phoenix, Arizona, apparently willfully violated Sections 11.35(a) and 73.1125(c) of the Commission’s Rules and Regulations (“Rules”),¹ by failing to ensure that required Emergency Alert System (“EAS”) equipment was operational and failing to establish a main studio at a location within the station’s predicted Grade B contour (as outlined in Section 73.683 of the Rules).² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ that Aracelis Ortiz is apparently liable for forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On May 6, 2002, an agent from the Federal Communications Commission’s (“FCC”) San Diego office attempted to conduct a routine inspection of the EAS equipment of Class A station KCOS-LP. Station KCOS-LP was granted status as a Class A station on April 27, 1999.⁴ The agent discovered that there was neither a studio address nor telephone listing for station KCOS-LP in any of the telephone directories for the Phoenix area. However, the transmitter for station KCOS-LP, located on Utery Mountain near Mesa, Arizona, was operating on TV channel 28.

3. On May 9, 2002, an agent at the FCC’s San Diego office telephoned the licensee in Harlingen, Texas to obtain a studio address and telephone number for KCOS-LP. No one knowledgeable about KCOS-LP was available at that time. A letter of inquiry was sent to the licensee on May 10, 2002, requesting the identity of a contact person in the Phoenix area responsible for KCOS-LP, the address of the local studio and a local telephone number. A fax reply was received by the FCC’s San Diego office on May 20, 2002, giving a telephone number and an address for the KCOS-LP studio. A call was attempted to the KCOS-LP studio, but the number provided by the licensee was disconnected.

¹ 47 C.F.R. §§ 11.35(a), and 73.1125(c).

² 47 C.F.R. § 73.683.

³ 47 U.S.C. § 503(b).

⁴ See BLTTL-19990325JD.

4. On June 24, 2002, an agent from the San Diego office visited the studio address provided, 6750 E. Main St., Suite 106, Mesa, Arizona. The agent found no studio for KCOS-LP at that address. Rather the transmitter site management company was located at that address. Employees of the site management company provided a Phoenix area telephone number for KCOS-LP.

5. On June 25, 2002, using the telephone number provided by the site management company, the agent reached Mr. Thomas Norcross, station manager for KCOS-LP. Mr. Norcross stated that KCOS-LP did not have a studio in operation at that time, but one was under construction at 3820 E. Main St, Suite 10, Mesa, Arizona. He also stated that KCOS-LP was operating as a Low Power TV station and did not originate any programming, as it was rebroadcasting programs received by an earth station at the transmitter site, atop Utery mountain. Mr. Norcross also stated that KCOS-LP did not have any EAS equipment installed at that time, but would when the studio was completed.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁵ The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶

7. Commission licensees are responsible for familiarizing themselves and complying with applicable statutes and Commission Rules and policies, regardless of the length of time the licensee has been engaged in broadcasting.⁷ The Rules provide that every broadcast station, including a Class A television station, is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁸ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁹ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹⁰

8. The Rules specifically require broadcast stations, including Class A stations,¹¹ to install and make operational EAS equipment (encoders, decoders, attention signal generators and receivers) so that monitoring and transmitting functions are available during the times whenever the station is in operation.¹² The Rules also require broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt and (b) conduct tests of the EAS header and

⁵ 47 U.S.C. § 503(b).

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ See *Bay Television, Inc.*, 10 FCC Rcd 11509 (1995) (rejecting licensee's request for lenient treatment because it had been on the air for barely six months.); *Radio One Licensees, Inc.*, Memorandum Opinion and Order, DA 02-219 (Enf. Bur. Jan 31, 2002) (rejecting licensee's request for lenient treatment because the station had been acquired less than six months before, noting also that the licensee was an experienced broadcaster).

⁸ 47 C.F.R. §§ 11.11 and 11.41.

⁹ 47 C.F.R. §§ 11.1 and 11.21

¹⁰ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

¹¹ 47 C.F.R. § 11.11.

¹² 47 C.F.R. § 11.35.

EOM codes at least once a week at random days and times.¹³ Based on the evidence, we find that on June 25, 2002, Aracelis Ortiz willfully violated section 11.35 of the Rules by failing to have EAS equipment installed and operational.

9. The Rules also require broadcast stations, including Class A stations, to establish and maintain a main studio to serve the needs and interests of the residents of the station's community of license.¹⁴ Based on the evidence, we further find that on June 25, 2002, Aracelis Ortiz did not maintain a studio in the Phoenix area for Station KCOS-LP.

10. Based on the evidence before us, we find that Aracelis Ortiz, Executrix of the Estate of Carlos Ortiz, apparently willfully violated Sections 11.35(a) and 73.1125(c) of the Rules, by failing to have EAS equipment properly installed and operational and failing to maintain a main studio. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,¹⁵ the base forfeiture amount for EAS equipment not installed or operational is \$8,000 and for not maintaining a main studio is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁶ In applying Section 1.80(b)(4) of the Rules and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amounts. Therefore, a total forfeiture in the amount of \$15,000 is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Aracelis Ortiz, Executrix of the Estate of Carlos Ortiz, is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for violating Sections 11.35(a), and 73.1125(c) of the Commission's Rules and Regulations.¹⁷

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Aracelis Ortiz, Executrix of the Estate of Carlos Ortiz, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must note the NAL/Account No. 200232940008 and FRN 0003-7552-87.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, DC 20554 and must include the NAL/Acct. No. 200232940008.

¹³ 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform with the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt.)

¹⁴ 47 C.F.R. § 73.1125(c).

¹⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁶ 47 U.S.C. § 503(b)(2)(D).

¹⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35, and 73.1125.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

17. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail, return receipt requested, to Aracelis Ortiz, Executrix of the Estate of Carlos Ortiz, P.O. Box 530391, Harlingen, TX 78553.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director
San Diego Office

¹⁸ See 47 C.F.R. § 1.1914.